

Appl. No.: 09/661,292  
Docket No.: 0879-0275P  
Reply to final Office Action of September 15, 2003

REMARKS

Claims 1-4 are pending in this application. Claims 1 and 4 are independent claims. Reconsideration in view of the following remarks is respectfully solicited.

The Claims Define Patentable Subject Matter

The final Office Action rejects: (1) claims 1, 2 and 4 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,035,137 to Kaneko et al (hereafter Kaneko) in view of U.S. Patent No. 5,493,357 to Hara et al. (hereafter Hara); and (2) claim 3 under 35 U.S.C. §103(a) as being unpatentable over Kaneko in view of U.S. Hara and further in view of U.S. Patent No. 5,859,733 to Miyano et al. (hereafter Miyano).

These rejections are respectfully traversed.

Kaneko is Disqualified as Prior Art under §103(a)

Applicant respectfully points out that according to MPEP §707.02(k) and §706.02(l)(1), subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now *disqualified as prior art* (emphasis added) against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." The mere filing of an original application, or a continuing application including continuing applications filed under 37 CFR 1.53(b), continued prosecution applications filed under 37 CFR 1.53(d), and reissues, on or after November 29, 1999, with the required evidence of common

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ownership, will serve to exclude commonly owned 35 U.S.C. 102(e) prior art that was applied, or could have been applied, in a rejection under 35 U.S.C. 103 in the parent application.

Applicant respectfully advises the Examiner that the present application was filed on September 13, 2000 (after the November 29, 1999 effective date). The required evidence of common ownership is shown in the Assignment papers filed on January 3, 2001 in the present application, depicting "Fuji Photo Optical Co., Ltd." as the common owner between the present application and the cited Kaneko et al. (USP 6,035,137) reference.

Accordingly, applicant respectfully submits that the base reference, Kaneko (USP 6, 035,137), used for the 103(a) rejection in the final Office Action is now disqualified as prior art against the claimed invention.

Applicant respectfully submits that both Hara and Miyano fail to make up for the disqualification of Kaneko. As such, applicant respectfully submits that claims 1-4 are allowable, for at least the reasons set forth above, over the cited references.

Accordingly, withdrawal of the rejection of claims 1-4 under 35 U.S.C. §103(a) in the September 15, 2003 final Office Action is respectfully solicited.

Priority date predates Patent date of Kaneko

Applicant also respectfully submits that Kaneko could also arguably qualify as prior art under 35 U.S.C. §102(a). As such, along with arguing that Kaneko is disqualified as prior art under 102(e)/103(a), applicant also submits that the priority date for the present case is September 13, 1999, which predates the patent

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date of the Kaneko reference (e.g., March 7, 2000). As a result, applicant shall perfect filing of our priority document by filing an English translation of the priority document in due time to swear behind the patent date of Kaneko, which is March 7, 2000.

In view of the foregoing, Applicant respectfully submits that the application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

#### Conclusion

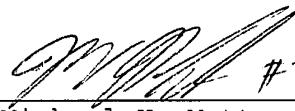
In view of the foregoing, Applicant respectfully submits that the application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact Carolyn T. Baumgardner (Reg. No. 41,345) at (703) 205-8000 to schedule a Personal Interview.

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment from or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17; particularly, the extension of time fees.

Respectfully submitted,  
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Attachment(s): English Translation of Priority Document 11-258979  
(to follow)